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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40 -771
Regulation title	Local Department Approved Provider Standards
Action title	Conform to Federal and State Law
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The regulation addresses standards for local departments of social services to approve and regulate service providers including adult service providers, child care providers, and adoptive and foster providers. The purpose of the proposed action is to repeal the existing regulation, 22 VAC 40-770 et seq., and replace it with a new regulation. The current regulation includes generic provisions that apply to all providers. Because of the uniqueness of each type of provider; such a format is no longer effective. The new regulation is divided into appropriate sections for adult services, child care, adoptive and foster providers, and is updated to comply with changes to federal and state laws and regulations. Substantive changes include addition of barrier crimes standards for adult providers and rights and responsibilities of adults in care. In addition, timeframes for repeat background checks and prohibition of allowable variances for certain crimes are addressed.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Pursuant to § 63.2-217 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-217>), the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of public assistance and social services programs. The regulation does not exceed the scope of the mandate. The Office of the Attorney General certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable federal and state law.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The regulation is necessary to protect the health, safety, and welfare of citizens by setting a base of quality in purchasing care and making placements for vulnerable children and adults. Because of these standards, assurances can be made that the care purchased or arranged meets health and safety standards and supports care which is conducive to the health, safety and well-being of individuals, children and families. The goal of the new regulation is to maintain these assurances, while also ensuring conformity with all current federal and state laws and regulations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The new regulation greatly differs from the current relative to formatting and lay-out. The current regulation was written in generic format, sectioned according to topics such as age, criminal records, home safety, etc. Users must read the entire regulation to determine if and how a particular standard applies to the program in which they work. The proposed regulation is re-formatted, with a separate section for each provider type. Each section addresses all applicable standards for that provider type.

Substantive changes include:

- Addition of barrier crimes standards for adult providers.

- Adds requirements regarding the handling of medications for adult foster care and adult day care.
- Adds new section on rights and responsibilities of adults in care.
- Modifies provision for tuberculosis screening requirements to conform to Department of Health policies.
- Clarifies that allowable variances to permanency provider standards are not allowed if the provider is convicted of a crime pursuant to §63.2-1719 of the Code of Virginia.
- Addresses when a criminal background and CPS check must be repeated.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The public benefits by being assured that service providers approved through local departments of social services meet standards and are qualified to care for children and adults. The Department of Social Services and the Commonwealth benefit by having clear procedures aligned with current applicable federal and state laws and regulations. There are no disadvantages to the public or Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There are no projected costs to the state.
Projected cost of the regulation on localities	There are no projected costs to localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation.	Adult Services department-approved providers, including home-based services, adult foster care, and adult day care providers. Family day homes not required to be licensed and who choose to be locally approved. Adoptive and foster parents who choose to be locally approved. Local departments of social services.

<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>Approximately 63 adult foster care providers, 2,231 home-based adult care providers, 600 children’s family day homes and 5,000 foster homes approved by local departments. There are 121 local departments of social services, although not all local departments approve all provider types.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>For adult services providers: The current charge for a criminal history record check conducted by the Virginia State Police is \$15. This will mean an individual expenditure of \$15 per Adult Services provider. For child care providers: The cost of First Aid certification (valid for three years) and CPR certification (valid for one year) combined through the Red Cross is \$60. The Department of Social Services offers training for all child care providers at a cost of \$20 per six-hour training. Note: Local departments may use federal funds that are currently available to help child care providers with the cost of training if they make the funds available to all local department approved child care providers in their localities. Continuation of these funds is not guaranteed.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

An alternative would be to allow each local department of social services to develop its own provider standards. This alternative is rejected, however, because providing a set of provider standards for all local departments of social services to use reduces the risk of harm to children and adults, offers families assurances that providers and their homes meet qualifications, and is less confusing and easily understood by the entities affected.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No public comment was received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have a positive impact on the adults, children and families who utilize the services of local department approved providers, because providers will be held to updated standards which comply with state and federal requirements and with best practices.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10. Definitions.	10. Definitions.	Includes definitions	<p>The following definitions have been changed:</p> <p>“Adoptive parent or parents.” Current definition provides that standards apply to adoptive parents until final order. This is deleted from the definition and added to Section 50.</p> <p>“Child or children.” Definition was modified to be consistent with the Code of Virginia definition of child.</p> <p>“Foster parent.” Definition was changed to include reference to §63.2-900 of the Code of Virginia, regarding accepting children for placement in homes by local boards.</p> <p>The following definitions were added:</p> <p>“Adult abuse,” “Adult exploitation,” “Adult neglect,” “Adult services,” “Central Registry,” “Department,”</p>

			<p>Family day home,” “Home based service,” “In-home child care provider,” “Local board,” “Local department,” “Local department approved provider,” “Home-based services,” and “Permanency Provider.”</p> <p>The following definitions were deleted:</p> <p>“Adult foster or family care provider,” “Agency,” “Child Protective Services Central Registry,” “Family day care provider,” “In-home day care provider,” and “Residential care.”</p>
20. Agency Approved Providers.	20. Local Department Approved Providers.	Identifies out-of-home and in-home providers	<p>Title changed to clarify that providers are approved by local departments of social services.</p> <p>All other provisions remain except for following:</p> <p>B.1.a.: Statement added to clarify that the standards do not apply to adoptive parents after finalization.</p> <p>B.1 and 2: Provider names changed to match Definitions.</p> <p>C: Statement added to clarify that standards apply only to providers approved by local department of social services.</p>
30. Standards for providers and other persons.	30. Adult Services.	Addresses requirements for age, criminal records, child abuse/neglect records, interviews and references for all provider types.	<p>This section of the current regulation is deleted and replaced with a section exclusively addressing adult services. Changes for adult services providers include:</p> <p>A.2: Adds barrier crimes that shall prohibit a provider and, for out-of-home care, the assistant, spouse, and other adult household members who come in contact with adults in care, from receiving approval as a provider; these persons must identify any</p>

			<p>criminal convictions and consent to a criminal record search. Currently, there is no requirement for a criminal record search for adult services providers. The provider may request a variance on this requirement if it does not jeopardize the safety or proper care of adult and the local department approves the exception. The provider shall pay the fee for the criminal record check.</p> <p>A.3: Requires that the provider be knowledgeable of caring for adults. At least one interview must occur in the home where care is to be provided for adult foster care and adult day services in which all members of the household shall be interviewed to ensure they understand the demands and expectations of care to be given.</p> <p>A.3.g: Adds requirements that providers must meet for adult foster care; these mirror those of assisted living facilities. Recipients of both services may receive an Auxiliary Grant. Effective 7/1/03, the maximum reimbursement rate for both programs became the same (previously, adult foster care had been almost \$300 less than assisted living). The same expectations and accountability issues should apply to both services.</p> <p>A.4.b: Clarifies that training requirements will not exceed 12 hours per year. It also notes that the provider will bear the cost of any required training unless the local department subsidizes the cost for all local department approved providers in the locality.</p> <p>A.5.a: Modifies provision for tuberculosis screening requirements to</p>
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		<p>conform to policy changes made by the Department of Health (i.e., the statement must read “is believed to be free of tuberculosis” rather than “is free of tuberculosis”).</p> <p>A.6: Adds requirement for providers to keep the local department apprised of changes in the household that may affect approval.</p> <p>A.7: Added at the request of local departments who have difficulties handling providers who do not perform the work as assigned.</p> <p>B.3.b. and c: Further defines the provision of meals and snacks to be nutritionally balanced and appropriate to the length of time in care and that drinking water provided should be adequate.</p> <p>B.4: Updates the regulation to conform to current <i>Code of Virginia</i> requirements regarding vehicular safety.</p> <p>B.5.c: Adds requirements regarding the handling of medications for adult foster care and adult day services.</p> <p>B.5.d: Adds requirements to mirror requirements in adult foster care with assisted living facility regulations. Adult foster care is not an appropriate setting for adults with certain heavy-care, nursing-oriented needs (such as being ventilator dependent or requiring continuous licensed nursing care). This makes the requirements for adult foster care and assisted living more consistent and is an additional protection to vulnerable adults.</p> <p>B.8: Adds information on providers’ obligation to report suspected cases of</p>
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		<p>abuse, neglect, or exploitation to Adult Protective Services.</p> <p>B.9: Requires that adult foster care recipients have adequate, properly fitting, and seasonal clothing that is properly cleaned or laundered and altered or repaired as necessary.</p> <p>C.2.b.-d: Standards for the home of the adult foster care or adult day services provider had language reworked and approved by the State Fire Marshal regarding fire inspections and emergency plans.</p> <p>C.2.e: Clarifies what is expected to meet minimal safety safeguards relative to weapons in the home.</p> <p>C.2.f.: Requires that household pets be up-to-date on vaccinations.</p> <p>D: Enhances record requirements for adult foster care and adult day services, including confidentiality issues.</p> <p>E: Specifies that the home must also meet requirements for adult day services and adult foster care in order for the provider to be approved.</p> <p>H: Adds that monitoring shall include interviews with adults in care and that the adult shall have access to provider monitoring reports upon request.</p> <p>J: “Inability to meet standards” was clarified to reflect best practices and what is currently occurring in the field. Specifically, the section addresses conditions and penalties for provisional approval, suspension of approval, and revocation of approval.</p> <p>K: For the out-of-home provider who</p>
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			<p>relocates, allows the locality up to 30 days to determine continued compliance with standards related to the home.</p> <p>L: Changes word “grieve” to “appeal.”</p> <p>M: Adds a new section pertaining to rights and responsibilities of adults in care, not in the current regulation. It mirrors those in the Licensing of Assisted Living Facilities regulation. The right to self-determination is inherent in our adult programs and is a major difference in adult vs. children’s programs. Some recommendations are from a study completed by Virginia Commonwealth University.</p>
<p>40. Standards for care.</p>	<p>40. Child Care.</p>	<p>Addresses non-discrimination, supervision, food, transportation, medical care, discipline of children, activities, abuse, neglect and exploitation reporting and clothing requirements for all provider types.</p>	<p>This section of the current regulation is deleted and replaced with a section exclusively addressing child care. Changes for child care providers include:</p> <p>A.2: Adds requirements for criminal background checks, disclosure of convictions of barrier crimes and Child Protective Services Central Registry checks to reflect requirements in §63.2-1725 of the <i>Code of Virginia</i>.</p> <p>A.2.c.(3): This section is new. Requirements for providers to meet health and safety standards is based on best practice to ensure that providers approved under this regulation have health and safety training necessary to ensure the safety of children. Child Care and Development Fund (CCDF) regulations, 45 CFR Parts 98 and 99. § 98.40 (b)(1) permit states to impose more stringent standards on child care providers of services which assistance is provided under the CCDF than the standards or requirements imposed on</p>

			<p>other child care providers.</p> <p>A.4.e: Adds a provision to conduct at least one interview in the home where the care is to be provided and to interview all adult household members to protect the safety of the children in care.</p> <p>A.5: Adds a requirement for child care providers to attend required orientation and training based on best practice for the safety of children and to more closely align requirements with those of licensed family day home providers. Clarifies that training requirements will not exceed 12 hours per year in addition to any requirements for first aid and cardiopulmonary resuscitation (CPR). It also notes that the provider will bear the cost of any required training unless the local department subsidizes the cost for all local department approved providers in the locality.</p> <p>A.6: Modifies provision for tuberculosis screening requirements to conform to policy changes made by the Department of Health (i.e., the statement must read “is believed to be free of tuberculosis” rather than “is free of tuberculosis”).</p> <p>A.7: Adds an additional requirement for the provider to keep the local department informed of changes that may affect approval of that provider as a safety measure for the children in care.</p> <p>B.2.c: Adds a provision for the length of an extended absence as a safety measure to ensure that substitute care arrangements is approved.</p>
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			<p>B.4.c: Modifies requirements for child restraint devices to ensure the safety of all passengers being transported.</p> <p>B.7.a.(1): Expands the requirement for space for activities as a health and safety measure to ensure that adequate space is available.</p> <p>B.8: Revises the requirements regarding mandated reporting of suspected child abuse, neglect, or exploitation of children in accordance with §63.2-1509 of the <i>Code of Virginia</i> and the toll-free child abuse hotline number is added.</p> <p>C.2.e: Expands and strengthens the requirements regarding possession and storage of firearms in the home are to ensure the safety of children in care.</p> <p>C.2.f: Expands the requirements for household pets to ensure the safety of children in care.</p> <p>C.2.h: Clarifies the requirements for smoke detectors to ensure the detectors are battery-operated and to exempt installations approved by State or Local Fire Marshals.</p> <p>C.4: Clarifies the capacity of family day homes to ensure local departments do not approve homes that are subject to licensure according to §63.2-100 of the <i>Code of Virginia</i>.</p> <p>G.2: Adds a requirement that provides access to an approved home by a Department representative whenever a child is in care for the protection of children. Similar protection is provided for children in licensed family day homes by § 63.2-1706 of the <i>Code of Virginia</i>.</p>
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			<p>G.3: Adds a requirement that provides access by a parent to the home and their child whenever the child is in care for the protection of children and is based on §63.2-1813 of the <i>Code of Virginia</i>.</p> <p>K: Revises grievance procedures for clarification</p>
<p>50. Standards for the home of the out-of-home provider.</p>	<p>50. Permanency Providers: Adoption.</p>	<p>Addresses physical accommodations, home safety, physical accommodations, home safety, sanitation and capacity for all provider types.</p>	<p>This section of the current regulation is deleted and replaced with a section exclusively addressing adoptive applicants and parents. Changes for adoption include:</p> <p>B.2: Revises the section on criminal record background checks to comply with state and federal law. The 1997 Adoption and Safe Families Act and §63.2-1719 of the <i>Code of Virginia</i> identify specific criminal offenses which are barriers to becoming adoptive parents. This section of the regulation has been revised to comply with these laws. The current regulation requires a criminal background check, so this is not a new requirement.</p> <p>B.3: Deletes reference to a finding of “reason-to-suspect” relative to a child protective services record check because it is obsolete.</p> <p>B.4.b: Clarifies that the local department may request more than two references to ensure the safety and well-being of the child.</p> <p>B.4.e: Adds requirement for the local department to conduct a home study in a format prescribed by the Department. Local departments already conduct adoptive homes studies and this requirement is based on current best practice.</p>

			<p>B.4.f: Adds specific sources of financial information for the adoptive parent to the current provision to ensure that adoptive parents can financially support an adopted child.</p> <p>B.4.g: Adds a provision that at least one interview must occur in the adoptive home and must include all adult household members. This is an added measure to ensure the adopted child’s safety and well-being.</p> <p>B.5. Requires that the local department shall provide a minimum of 27 hours basic orientation and training to every provider prior to the placement of children in the home. Requires a minimum of 12 hours in-service training per year for all approved providers. Specifies that orientation and training will be at no cost to the provider.</p> <p>B.6.a: Modifies provision for tuberculosis screening requirements to conform to policy changes made by the Department of Health (i.e., the statement must read “is believed to be free of tuberculosis” rather than “is free of tuberculosis”).</p> <p>C.4.c: Modifies provision by requiring providers to use child restraint devices in accordance with Virginia law. The current regulation limits the provision to weight and age requirements of Virginia law.</p> <p>C.7: Adds reference to the 24-hour toll free hotline and the telephone number for reporting suspected child abuse and neglect.</p> <p>D.2.b: Modifies provision to require that the home and grounds be free of</p>
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		<p>safety hazards and allows the local department to require a fire inspection if needed to ensure the overall safety of children in care. The current regulation provides only that the home be free of fire hazards.</p> <p>D.2.e: Expands the provision for possessing and storing firearms in the home, to better protect the safety of the child in care.</p> <p>D.2.h: Expands the provision for battery-operated smoke detectors to include additional floors in the home. This replaces the current regulation’s more general smoke detector provision in B, 4.</p> <p>G: The proposed regulation, like the current regulation, continues to allow for an allowable variance if the variance does not jeopardize the safety and care of the child, or violate federal, state or local law. The proposed regulation adds that a variance will not be granted if the provider has been convicted of a crime pursuant to §63.2-1719 of the <i>Code of Virginia</i>. The 1997 Adoption and Safe Families and <i>Code of Virginia</i> do not allow for variances relative to barrier crimes.</p> <p>H. Specified that criminal record background checks and child abuse and neglect central registry checks must be completed at each renewal on the adoptive parent(s) provider and other adult household members in order for the family to continue to meet standards.</p> <p>K: The proposed regulation, like the current regulation, continues to provide for provider grievances of</p>
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			<p>agency actions. The proposed regulation clarifies that the grievance would be to the local board, and that if the provider is not satisfied, the provider may appeal to the Commissioner or his designee. Further, the proposed regulation clarifies that decisions on the placement of a specific child are not subject to appeal to the Commissioner, pursuant to §16.1-278.2 and Title 63.2, Chapter 12 of the <i>Code of Virginia</i>. Proposed language clarifies that the grievance procedure applies to applicants as well as providers, which has been presumed in practice.</p>
<p>60. Client record requirements for the out-of-home provider.</p>	<p>60. Permanency Providers: Foster Care.</p>	<p>Addresses maintenance of client documentation for all provider types.</p>	<p>This section of the current regulation is deleted and replaced with a section exclusively addressing foster parent applicants and parents. Changes for foster care include:</p> <p>A.2: Revises the section on criminal record background checks to comply with state and federal law. The 1997 Adoption and Safe Families Act and §63.2-1719 of the <i>Code of Virginia</i> identify specific criminal offenses which are barriers to becoming foster parents. This section of the regulation has been revised to comply with these laws. The current regulation requires a criminal background check, so this is not a new requirement.</p> <p>A.3: Deletes reference to a finding of “reason-to-suspect” relative to a child protective services record check because it is obsolete.</p> <p>A.4.b: Clarifies that the local department may request more than two references to ensure the safety and well-being of the child.</p> <p>A.4.e: Adds a requirement for the</p>

			<p>local department to conduct a home study in a format prescribed by the Department. Local departments already conduct home studies, and this requirement is based on current best practice.</p> <p>A.4.f: Adds a provision that at least one interview must occur in the foster home and must include all adult household members. This is an added measure to ensure the child’s safety and well-being.</p> <p>A.5. Requires that the local department shall provide a minimum of 27 hours basic orientation and training to every provider prior to the placement of children in the home. Requires a minimum of 12 hours in-service training per year for all approved providers. Specifies that orientation and training will be at no cost to the provider.</p> <p>A.6.a: Modifies provision for tuberculosis screening requirements to conform to policy changes made by the Department of Health (i.e., the statement must read “is believed to be free of tuberculosis” rather than “is free of tuberculosis”).</p> <p>B.4.c: Modifies provision by requiring providers to use child restraint devices in accordance with Virginia law. The current regulation limits the provision to weight and age requirements of Virginia law.</p> <p>B.7: Adds reference to the 24-hour toll free hotline and the telephone number for reporting suspected child abuse and neglect.</p> <p>C.1.i: Modifies provision to provide</p>
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		<p>that a child of the opposite sex shall not share a bed or bedroom. The current regulation provides that a child of the opposite sex shall not share a double bed. The proposed change is in keeping with best practice and concern for the child’s well being.</p> <p>C.1.j: Clarifies that a child over age five shall not share a bedroom with an adult. This is a new provision, and consistent with concern for the child’s safety and well-being.</p> <p>C.2.b: Modifies provision to require that the home and grounds be free of safety hazards and allows the local department to require a fire inspection if needed to ensure the overall safety of children in care. The current regulation provides only that the home be free of fire hazards.</p> <p>C.2.e: Expands the provision for possessing and storing firearms in the home, to better protect the safety of the child in care.</p> <p>C.2.h: Expands the provision for battery-operated smoke detectors to include additional floors in the home. This replaces the current regulation’s more general smoke detector provision in B, 4.</p> <p>F: The proposed regulation, like the current regulation, continues to allow for an allowable variance if the variance does not jeopardize the safety and care of the child, or violate federal, state or local law. The proposed regulation adds that a variance will not be granted if the provider has been convicted of a crime pursuant to §63.2-1719 of the <i>Code of Virginia</i>. The 1997 Adoption and Safe</p>
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			<p>Families Act and <i>Code of Virginia</i> do not allow for variables relative to barrier crimes.</p> <p>I. Specified that criminal record background checks and child abuse and neglect central registry checks must be completed at each renewal on the foster parent(s) provider and other adult household members in order for the family to continue to meet standards...</p> <p>L: The proposed regulation continues to provide for foster care provider grievances and appeals of agency actions. The proposed regulation clarifies that the grievance would be to the local board, and that if the provider is not satisfied, the provider may appeal to the Commissioner or his designee. Further, the proposed regulation clarifies that decisions on the placement of a specific child are not subject to appeal to the Commissioner, pursuant to §16.1-278.2 and Title 63.2, Chapter 12 of the <i>Code of Virginia</i>. Proposed language clarifies that the grievance procedure applies to applicants as well as providers, which has been presumed in practice.</p>
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The remainder of the current regulation includes separate sections generic to all provider types regarding: approval period (70), allowable variance (80), emergency approval (90), provider monitoring (100), renewal process (110), inability to continue to meet standards (120), relocation of out-of-home provider (130), right to grieve (140), foster parent right to appeal (150), and medical requirements for clients (160). These sections have been deleted in the proposed regulation because the items are addressed (as applicable) in the new provider-specific sections of 22 VAC 40-771, as detailed above.